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Appl. No.	:	10/806,470	Confirmation No. 1710
Applicant	:	Takayuki AKAHOSHI	
Filed	:	March 23, 2004	
TC/A.U.	:	3739	
Examiner	:	N/A	
Docket No.	:	1278-160	
Cust. No.	:	06449	

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

PETITION TO MAKE SPECIAL

Dear Sir:

Pursuant to 37 C.F.R. §1.102(d), Applicant hereby requests that the above-referenced application be made special on the basis that a pre-examination search was made, and the claimed subject matter is distinguishable over the references found in the search. In support of this petition, the Applicant submits the following:

(1) A detailed discussion of references found during a pre-examination search, including a statement concerning who conducted the search and the scope of the search;

(2) One copy of each reference found during the pre-examination search; and

(3) A check in the amount of $130.00 as set forth in 37 C.F.R. §1.17(h).

The Applicant believes that all of the presently pending claims are directed to a single invention. If, however, the Patent Office determines that all the claims presented

are not obviously directed to a single invention, the Applicant will make an election at that time. Furthermore, the undersigned representative of the Applicant will make such an election over the telephone if the Examiner telephones the undersigned representative of the Applicant.

The Applicant respectfully submits that the present application is in condition to be made special. Favorable consideration is earnestly solicited.

Please charge any additional fees or payments to Deposit Account No. 02-2135. An extra copy of this petition is submitted for this purpose.

Respectfully submitted,

By _____

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STATEMENT REGARDING THE PRE-EXAMINATION SEARCH IN SUPPORT OF APPLICANT'S PETITION TO MAKE SPECIAL

Dear Sir:

In connection with the Petition to Make Special filed concurrently herewith, Applicant submits this statement and Form 1449 concerning the pre-examination search which was performed on behalf of Applicant.

(1) A pre-examination search was conducted.

(2) The pre-examination search was performed by the Applicant's representative, Mr. Carmine Cuda, a professional searcher.

(3) The pre-examination search was conducted at the U.S. Patent and Trademark Office, by the above-mentioned Mr. Cuda. Mr. Cuda reviewed the electronic files contained in the USPAT, EPO, JPO and PRE-GRANT PUB databases. Mr. Cuda also consulted Examiner S. Kennedy of AU 3762 to confirm that the field of search was of reasonable scope.

The class/subclasses searched were as follows:

Class 606 surgery:

Subclass 169: instruments; cutting, puncturing or piercing; cutter having vibratory drive means.

Subclass 22: means for introducing or removing material from body for therapeutic purposes (e.g., medicating, irrigating, aspirating, etc.); with means for cutting, scarifying, or vibrating (e.g., ultrasonic, etc.) tissue.

Subclass 27: means for introducing or removing material from body for therapeutic purposes (e.g., medicating, irrigating, aspirating, etc.); material introduced into and removed from body through passage in body inserted means.

Subclass 35: means for introducing or removing material from body for therapeutic purposes (e.g., medicating, irrigating, aspirating, etc.); material introduced into and removed from body through passage in body inserted means; with aspirating or vacuum removing means.

Subclass 272: means for introducing or removing material from body for therapeutic purposes (e.g., medicating, irrigating, aspirating, etc.); treating material introduced into or removed from body orifice, or inserted or removed subcutaneously other than by diffusing through skin; material introduced or removed through conduit, holder, or implantable reservoir inserted in body; body inserted tubular conduit structure (e.g., needles, cannulas, nozzles, trocars, catheters, etc.) ; body piercing conduit (e.g., needle, etc.).

Mr. Cuda searched the above subclasses initially ANDed with the keywords (PHACO$ OR CATARACT$). Mr. Cuda then completed the search of the above subclasses without the keywords, i.e. reviewed the references contained therein. The EAST system of the USPTO was used in reviewing the prior art and included the USPAT, EPO, JPO and PRE-GRANT PUB databases.

(4) Results of Pre-examination Search

(a) References found during the search

The following references were uncovered by the pre-examination search.

US Patent 3,809,093 to Abraham, filed April 14, 1972 and issued May 7, 1974, shows a surgical tool for eye surgery (Abstract) with a spherical or a ball-shaped tip 20 (Figs. 2, 3, and 7-12).

US Patent 4,767,404 to Renton, filed July 14, 1986 and issued August 30, 1988, shows a surgical suction device having a perforated sleeve and a perforated end portion 12 (Fig. 7).

US Patent 5,180,363 to Idemoto et al., filed December 23, 1991 and issued January 19, 1993, shows an ultrasonic surgical operation device having a ball-shaped tip 218 comprising outlets 217 for an irrigation liquid (Fig. 16B).

US Patent 5,213,569 to Davis, filed March 31, 1992 and issued May 25, 1993, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Fig. 3).

US Patent 5,527,273 to Manna et al., filed October 6, 1994 and issued June 18, 1996, shows a tip for an ultrasonic lipectomy probe having an exit diameter larger than a bore diameter (Figs. 1 and 5A).

US Patent 5,741,226 to Strukel et al., filed June 7, 1996 and issued April 21, 1998, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Figs. 7A, 7B, 28-30, and 43).

US Patent 5,755,700 to Kritzinger et al., filed November 22, 1995 and issued May 26, 1998, shows a corneal irrigation cannula 25 having three 25 gauge irrigating ports 28, 29 on its end 26 (column 7, lines 47-50, Figs. 3 and 5).

US Patent 6,074,396 to Geuder, filed April 7, 1998 and issued June 13, 2000, shows a hollow needle for an ophthalmic surgical instrument a tip having a distal end with co-axial bores 8, 9 with different diameters (Fig. 1).

US Patent 6,126,629 to Perkins, filed December 18, 1998 and issued October 3, 2000, shows a multiple port phaco needle having ports 40 at its distal tip 24 (Figs. 4 and 5).

US Patent 6,299,591 to Banko, filed June 19, 1998 and issued October 9, 2001, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Figs. 7A, 7B, 28-30, and 43). Banko discloses in figures 11A to 11D a phaco-emulsification needle having a ball-shaped tip 16 with an aspiration hole 18.

US Patent 6,491,670 to Toth et al., filed April 4, 2000 and issued December 10, 2002, shows a miniaturized surgical instrument with a flat, bulbous tip (Figs. 2 and 3).

US Patent 6,533,750 to Sutton et al., filed January 23, 2001 and issued March 18, 2003, shows a conically shaped phaco tip and a tip having an exit diameter larger than a bore diameter (Figs. 4 and 5).

US Patent 6,695,781 to Rabiner et al., filed July 27, 2001 and issued February 24, 2004, shows an ultrasonic medical device having a tip with an exit diameter larger than a bore diameter (Fig. 3 and 4).

In addition, the following references were cited in a search report in a companion European application.

US Patent 4,767,404 to Renton, filed July 14, 1986 and issued August 30, 1988, shows a surgical suction device having a perforated sleeve and a perforated end portion 12 (Fig. 7).

US Patent 6,491,670 to Toth et al., filed April 4, 2000 and issued December 10, 2002, shows a miniaturized surgical instrument with a flat, bulbous tip (Figs. 2 and 3).

(b) Comparison of pending claims to references found during the search.

The presently claimed invention is directed to a needle comprising a shaft with an aspiration lumen and a tip with a ball or a curved shape having a larger outer diameter than the shaft and comprising at least one aspiration opening in the region or on its distal end, i.e. the tip sits like a little head on the shaft and provides a passageway for removal of irrigation fluid and fragments of the cataract nucleus and residual cortex. None of the references found during the pre-examination search and discussed herein teach or suggest the presently claimed invention, either alone or in combination.

It was found by the inventor that using this tool is far more safe than the use of any conventional tips having the same diameter than the shaft. It was found that damages to the eye, especially rupturing the posterior capsule are prevented in a more secure way. It was found that the needle according to figures 19 to 21 with its mask design is a preferred one due to its improved safety.

None of the references uncovered by the pre-examination search and discussed herein disclose the presently claimed invention. In particular:

1. Claims 1 to 10:

Claim 1 recites,

"wherein said tip has a ball-shaped surface and wherein the tip has a flat distal end comprising said opening."

US Patent 3,809,093 to Abraham, filed April 14, 1972, shows a surgical tool for eye surgery (Abstract) with a spherical or a ball-shaped tip 20 (Figs. 2, 3, and 7-12), as discussed above. Abraham does not, however, disclose a phaco-emulsification needle as claimed in claim 1, nor does Abraham disclose an aspiration lumen extending through a shaft and this tip. Nor does Abraham disclose a tip having an opening communicating with said aspiration lumen. Rather, since the tip in Abraham does not comprise an internal lumen the shaft can be made very thin. Furthermore, Abraham does not disclose a tip having a flat distal end comprising said opening. Therefore, Abraham does also not disclose the features of the claimed invention.

US Patent 4,767,404 to Renton, filed July 14, 1986 and issued August 30, 1988, shows a surgical suction device having a perforated sleeve and a perforated end portion 12 (Fig. 7). Renton does not, however, disclose a phaco-emulsification needle as claimed in claim 1, nor does Renton disclose a tip having a flat distal end comprising said opening. Rather, in Renton, openings 13 are in the sides of the tip, as shown in Fig. 7, or else the distal end is not flat, as shown in Figs. 8 and 9. Therefore, Renton does also not disclose the features of the claimed invention.

US Patent 5,180,363 to Idemoto et al., filed December 23, 1991, shows an ultrasonic surgical operation device having a ball-shaped tip 218 comprising outlets 217 for an irrigation liquid (Fig. 16B), as discussed above. Idemoto does not, however, disclose a phaco-emulsification needle, nor does Idemoto disclose an aspiration lumen extending through a shaft. Furthermore Idemoto does not disclose a tip having an

opening communicating with the aspiration lumen and having a flat distal end. Therefore, Idemoto does also not disclose the features of the claimed invention.

US Patent 5,213,569 to Davis, filed March 31, 1992, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Fig. 3), as discussed above. Davis, however, shows no ball shaped tip having an opening in the distal flat end. Therefore, Davis does also not disclose the features of the claimed invention.

US Patent 5,527,273 to Manna et al., filed October 6, 1994, shows a tip for an ultrasonic lipectomy probe having an exit diameter larger than a bore diameter (Figs. 1 and 5A). Manna, however, shows no tip having a curved shape and an opening in the distal end. In Manna, rather, head 34 has parallel sides, as shown in Fig. 2B, while head 76 is button-shaped, as shown in Fig. 5B. Therefore, Manna does also not disclose the features of the claimed invention.

US Patent 5,741,226 to Strukel et al., filed June 7, 1996, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Figs. 7A, 7B, 28-30, and 43), as discussed above. Strukel, however, shows no ball shaped tip having an opening in the distal flat end. Therefore, Strukel does also not disclose the features of the claimed invention.

US Patent 5,755,700 to Kritzinger et al., filed November 22, 1995, shows a corneal irrigation cannula 25 having three 25 gauge irrigating ports 28, 29 on its end 26 (column 7, lines 47-50, Figs. 3 and 5), as discussed above. This needle comprises an irrigation lumen rather than an aspiration lumen. Kritzinger, furthermore, shows no ball shaped tip having an opening in the distal flat end. Therefore, Kritzinger does also not disclose the features of the claimed invention.

US Patent 6,074,396 to Geuder, filed April 7, 1998, shows a hollow needle for an ophthalmic surgical instrument a tip having a distal end with co-axial bores 8, 9 with different diameters (Fig. 1), as discussed above. Geuder, however, shows no ball shaped tip having an opening in the distal flat end. Therefore, Geuder does also not disclose the features of the claimed invention.

US Patent 6,126,629 to Perkins, filed December 18, 1998, shows a multiple port phaco needle having ports 40 at its distal tip 24 (Figs. 4 and 5), as discussed above. Perkins, however, shows no ball shaped tip having an opening in the distal flat end. Therefore, Perkins does also not disclose the features of the claimed invention.

US Patent 6,299,591 to Banko, filed June 19, 1998, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Figs. 7A, 7B, 28-30, and 43), as discussed above. Banko discloses in figures 11A to 11D a phaco-emulsification needle having a ball-shaped tip 16 with an aspiration hole 18. However, Banko does not disclose a needle having a ball shaped tip with a larger outside diameter than the shaft and it does not disclose a ball shaped tip having a flat distal end comprising said opening. Rather, the tip in Banko has the same outer diameter as the shaft. Therefore, Banko does also not disclose the features of the claimed invention.

US Patent 6,491,670 to Toth et al., filed April 4, 2000 and issued December 10, 2002, shows a miniaturized surgical instrument with a flat, bulbous tip (Figs. 2 and 3). Toth, however, shows no phaco-emulsification needle but rather a surgical instrument formed of an elastomeric material which is translucent or transparent. Furthermore, lumen communication ports 18a-1, 18a-2, and 18a-3 are not aspiration lumens. Therefore, Toth does also not disclose the features of the claimed invention.

US Patent 6,533,750 to Sutton et al., filed January 23, 2001, shows a conically shaped phaco tip and a tip having an exit diameter larger than a bore diameter (Figs. 4 and 5), as discussed above. Sutton, however, shows no ball shaped tip having an opening in the distal flat end. Therefore, Sutton does also not disclose the features of the claimed invention.

Therefore, none of the references found during the pre-examination search and discussed herein teach or suggest the combination of elements recited in claim 1, either alone or in combination. Claims 2-10 depend from claim 1 and add further distinguishing features. Therefore, none of the references found during the pre-examination search and discussed herein teach or suggest the combination of elements recited in claims 2-10, either. Finally, since none of the references found during the pre-examination search and discussed herein teach or suggest the combination of elements recited in claims 1-10 separately, their combination cannot, either.

Moreover, there is no suggestion in any of the references to combine them in such a way as to arrive at the combination of elements recited in claims 1-10. Any such combination of references to yield the combination of elements recited in claims 1-10 would be impermissible hindsight reconstruction of the claimed invention.

2. Claims 11 to 23:

Claim 11 recites,

"wherein said tip has a curved shape and wherein the tip has a distal end comprising said opening."

US Patent 3,809,093 to Abraham, filed April 14, 1972, shows a surgical tool for eye surgery (Abstract) with a spherical or a ball-shaped tip 20 (Figs. 2, 3, and 7-12), as discussed above. Abraham does not, however, disclose a phaco-emulsification needle

as claimed in claim 11, nor does Abraham disclose an aspiration lumen extending through a shaft and this tip. Nor does Abraham disclose a tip having an opening communicating with said aspiration lumen. Furthermore, Abraham does not disclose a tip having a distal end comprising said opening. Therefore, Abraham does also not disclose the features of the claimed invention.

US Patent 4,767,404 to Renton, filed July 14, 1986 and issued August 30, 1988, shows a surgical suction device having a perforated sleeve and a perforated end portion 12 (Fig. 7). Renton does not, however, disclose a phaco-emulsification needle as claimed in claim 1. Therefore, Renton does also not disclose the features of the claimed invention.

US Patent 5,180,363 to Idemoto et al., filed December 23, 1991, shows an ultrasonic surgical operation device having a ball-shaped tip 218 comprising outlets 217 for an irrigation liquid (Fig. 16B), as discussed above. Idemoto does not, however, disclose a phaco-emulsification needle, nor does Idemoto disclose an aspiration lumen extending through a shaft. Furthermore Idemoto does not disclose a tip having an opening communicating with the aspiration lumen and having a distal end. Therefore, Idemoto does also not disclose the features of the claimed invention.

US Patent 5,213,569 to Davis, filed March 31, 1992, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Fig. 3), as discussed above. Davis, however, shows no tip having a curved shape and an opening in the distal end. Therefore, Davis does also not disclose the features of the claimed invention.

US Patent 5,527,273 to Manna et al., filed October 6, 1994, shows a tip for an ultrasonic lipectomy probe having an exit diameter larger than a bore diameter (Figs. 1

and 5A). Manna, however, shows no tip having a curved shape and an opening in the distal end. In Manna, rather, head 34 has parallel sides, as shown in Fig. 2B, while head 76 is button-shaped, as shown in Fig. 5B. Therefore, Manna does also not disclose the features of the claimed invention.

US Patent 5,741,226 to Strukel et al., filed June 7, 1996, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Figs. 7A, 7B, 28-30, and 43), as discussed above. Strukel, however, shows no tip having a curved shape and an opening in the distal end. Therefore, Strukel does also not disclose the features of the claimed invention.

US Patent 5,755,700 to Kritzinger et al., filed November 22, 1995, shows a corneal irrigation cannula 25 having three 25 gauge irrigating ports 28, 29 on its end 26 (column 7, lines 47-50, Figs. 3 and 5), as discussed above. Kritzinger, however, shows no tip having a curved shape and an opening in the distal end. Therefore, Perkins does also not disclose the features of the claimed invention.

US Patent 6,074,396 to Geuder, filed April 7, 1998, shows a hollow needle for an ophthalmic surgical instrument a tip having a distal end with co-axial bores 8, 9 with different diameters (Fig. 1), as discussed above. Geuder, however, shows no tip having a curved shape and an opening in the distal end. Therefore, Geuder, does also not disclose the features of the claimed invention.

US Patent 6,126,629 to Perkins, filed December 18, 1998, shows a multiple port phaco needle having ports 40 at its distal tip 24 (Figs. 4 and 5), as discussed above. Perkins, however, shows no tip having a curved shape and an opening in the distal end. Therefore, Perkins, does also not disclose the features of the claimed invention.

US Patent 6,299,591 to Banko, filed June 19, 1998, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Figs. 7A, 7B, 28-30, and 43), as discussed above. Banko discloses in figures 11A to 11D a phaco-emulsification needle having a ball-shaped tip 16 with an aspiration hole 18. However, Banko does not disclose a needle having a tip with a larger outside diameter than the shaft and it does not disclose a ball shaped tip having a flat distal end comprising said opening. Therefore, Banko does also not disclose the features of the claimed invention.

US Patent 6,491,670 to Toth et al., filed April 4, 2000 and issued December 10, 2002, shows a miniaturized surgical instrument with a flat, bulbous tip (Figs. 2 and 3). Toth, however, shows no phaco-emulsification needle but rather a surgical instrument formed of an elastomeric material which is translucent or transparent. Furthermore, lumen communication ports 18a-1, 18a-2, and 18a-3 are not aspiration lumens. Therefore, Toth, does also not disclose the features of the claimed invention.

US Patent 6,533,750 to Sutton et al., filed January 23, 2001, shows a conically shaped phaco tip and a tip having an exit diameter larger than a bore diameter (Figs. 4 and 5), as discussed above. Sutton, however, shows no tip having a curved shape and an opening in the distal end. Therefore, Sutton, does also not disclose the features of the claimed invention.

Therefore, none of the references found during the pre-examination search and discussed herein teach or suggest the combination of elements recited in claim 11, either alone or in combination. Claims 12-23 depend from claim 1 and add further distinguishing features. Therefore, none of the references found during the pre-examination search and discussed herein teach or suggest the combination of elements recited in claims 12-23, either. Finally, since none of the references found during the

pre-examination search and discussed herein teach or suggest the combination of elements recited in claims 11-23 separately, their combination cannot, either.

Moreover, there is no suggestion in any of the references to combine them in such a way as to arrive at the combination of elements recited in claims 11-23. Any such combination of references to yield the combination of elements recited in claims 11-23 would be impermissible hindsight reconstruction of the claimed invention.

3. Claims 24 to 32:

Claim 24 recites,

"wherein said tip has a curved shape, the tip comprising a distal end and at least two openings being arranged in the region of said distal end."

US Patent 3,809,093 to Abraham, filed April 14, 1972, shows a surgical tool for eye surgery (Abstract) with a spherical or a ball-shaped tip 20 (Figs. 2, 3, and 7-12), as discussed above. Abraham does not, however, disclose a phaco-emulsification needle as claimed in claim 24, nor does Abraham disclose an aspiration lumen extending through a shaft and this tip. Nor does Abraham disclose a tip having at least two openings communicating with said aspiration lumen. Furthermore, Abraham does not disclose a tip having a distal end comprising said at least two openings. Therefore, Abraham does also not disclose the features of the claimed invention.

US Patent 4,767,404 to Renton, filed July 14, 1986 and issued August 30, 1988, shows a surgical suction device having a perforated sleeve and a perforated end portion 12 (Fig. 7). Renton does not, however, disclose a phaco-emulsification needle as claimed in claim 1. Therefore, Renton does also not disclose the features of the claimed invention.

US Patent 5,180,363 to Idemoto et al., filed December 23, 1991, shows an ultrasonic surgical operation device having a ball-shaped tip 218 comprising outlets 217 for an irrigation liquid (Fig. 16B), as discussed above. Idemoto does not, however, disclose a phaco-emulsification needle, nor does Idemoto disclose an aspiration lumen extending through a shaft. Furthermore Idemoto does not disclose a tip having at least two openings communicating with the aspiration lumen and having a distal end. Therefore, Idemoto does also not disclose the features of the claimed invention.

US Patent 5,213,569 to Davis, filed March 31, 1992, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Fig. 3), as discussed above. Davis, however, shows no tip having a curved shape and at least two openings in the distal end. Therefore, Davis does also not disclose the features of the claimed invention.

US Patent 5,527,273 to Manna et al., filed October 6, 1994, shows a tip for an ultrasonic lipectomy probe having an exit diameter larger than a bore diameter (Figs. 1 and 5A). Manna, however, shows no tip having a curved shape and an opening in the distal end. In Manna, rather, head 34 has parallel sides, as shown in Fig. 2B, while head 76 is button-shaped, as shown in Fig. 5B. Therefore, Manna does also not disclose the features of the claimed invention.

US Patent 5,741,226 to Strukel et al., filed June 7, 1996, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Figs. 7A, 7B, 28-30, and 43), as discussed above. Strukel, however, shows no tip having a curved shape and at least two openings in the distal end. Therefore, Strukel does also not disclose the features of the claimed invention.

US Patent 5,755,700 to Kritzinger et al., filed November 22, 1995, shows a corneal irrigation cannula 25 having three 25 gauge irrigating ports 28, 29 on its end 26 (column 7, lines 47-50, Figs. 3 and 5), as discussed above. Kritzinger, however, shows no tip having a curved shape and at least two openings in the distal end. Therefore, Kritzinger does also not disclose the features of the claimed invention.

US Patent 6,074,396 to Geuder, filed April 7, 1998, shows a hollow needle for an ophthalmic surgical instrument a tip having a distal end with co-axial bores 8, 9 with different diameters (Fig. 1), as discussed above. Geuder, however, shows no tip having a curved shape and at least two openings in the distal end. Therefore, Geuder does also not disclose the features of the claimed invention.

US Patent 6,126,629 to Perkins, filed December 18, 1998, shows a multiple port phaco needle having ports 40 at its distal tip 24 (Figs. 4 and 5), as discussed above. Perkins, however, shows no tip having a curved shape and at least two openings in the distal end. Therefore, Perkins does also not disclose the features of the claimed invention.

US Patent 6,299,591 to Banko, filed June 19, 1998, shows a tip for a phaco-emulsification device having an exit diameter larger than a bore diameter (Figs. 7A, 7B, 28-30, and 43), as discussed above. Banko discloses in figures 11A to 11D a phaco-emulsification needle having a ball-shaped tip 16 with an aspiration hole 18. Banko discloses in figure 25A a tip having two aspiration holes. However, these openings are arranged on the side of the tip and not in the region of its distal end. Therefore, Banko shows no tip having a curved shape and at least two openings in the distal end. Therefore, Banko does also not disclose the features of the claimed invention.

US Patent 6,491,670 to Toth et al., filed April 4, 2000 and issued December 10, 2002, shows a miniaturized surgical instrument with a flat, bulbous tip (Figs. 2 and 3). Toth, however, shows no phaco-emulsification needle but rather a surgical instrument formed of an elastomeric material which is translucent or transparent. Furthermore, lumen communication ports 18a-1, 18a-2, and 18a-3 are not aspiration lumens. Therefore, Toth does also not disclose the features of the claimed invention.

US Patent 6,533,750 to Sutton et al., filed January 23, 2001, shows a conically shaped phaco tip and a tip having an exit diameter larger than a bore diameter (Figs. 4 and 5), as discussed above. Sutton, however, shows no tip having a curved shape and at least two openings in the distal end. Therefore, Sutton does also not disclose the features of the claimed invention.

Therefore, none of the references found during the pre-examination search and discussed herein teach or suggest the combination of elements recited in claim 24, either alone or in combination. Claims 25-32 depend from claim 24 and add further distinguishing features. Therefore, none of the references found during the pre-examination search and discussed herein teach or suggest the combination of elements recited in claims 25-32, either. Finally, since none of the references found during the pre-examination search and discussed herein teach or suggest the combination of elements recited in claims 24-32 separately, their combination cannot, either.

Moreover, there is no suggestion in any of the references to combine them in such a way as to arrive at the combination of elements recited in claims 24-32. Any such combination of references to yield the combination of elements recited in claims 24-32 would be impermissible hindsight reconstruction of the claimed invention.

3. Claims 33 to 35:

Claim 33 recites,

"disposing a tip at a distal end of said shaft, said tip having a larger outside diameter than said shaft, a ball-shaped surface and a flat distal end;

extending an aspiration lumen through said shaft and said tip, the tip having an opening in said flat distal end communicating with said aspiration lumen."

None of the references found during the pre-examination search and discussed herein teach or suggest a tip having a larger outside diameter than a shaft, a ball-shaped surface and an opening in a flat distal end, as discussed above with respect to claim 1. Claim 33 thus ought to be allowable for at least the reasons discussed above with respect to claim 1.

Claim 34 recites,

"disposing a tip at a distal end of said shaft, said tip having a larger outside diameter than said shaft, a distal end and a curved shape;

extending an aspiration lumen through said shaft and said tip, the tip having an opening in said distal end of said tip communicating with said aspiration lumen."

None of the references found during the pre-examination search and discussed herein teach or suggest a tip having a larger outside diameter than a shaft, a curved shape and an opening in a distal end, as discussed above with respect to claim 11. Claim 34 thus ought to be allowable for at least the reasons discussed above with respect to claim 11.

Claim 35 recites,

"disposing a tip at a distal end of said shaft, said tip having a larger outside diameter than said shaft, a distal end and a curved shape;

extending an aspiration lumen through said shaft and said tip, the tip having at least two openings in said distal end of said tip communicating with said aspiration lumen."

None of the references found during the pre-examination search and discussed herein teach or suggest a tip having a larger outside diameter than a shaft, a curved shape and at least two openings in a distal end, as discussed above with respect to claim 24. Claim 35 thus ought to be allowable for at least the reasons discussed above with respect to claim 24.

In view of the above, Applicant submits that the present invention as claimed in claims 1-35 of the present application is novel and non-obvious.

Respectfully submitted,

By _____

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